

Water Pollution Control Advisory Council (WPCAC) Conference Call
August 23, 2001 1:30 p.m.-3:30 p.m.
Room 44 Metcalf Building

Attendees:

Council Members:

Richard Parks, Fishing Outfitters Association of MT
Barbara Butler, Billings Solid Waste Division
Mike Cobb, Livestock Feeders
Robert Willems, Conservation Districts
John Wilson, Montana Trout Unlimited
Doug Parker, ASARCO

Other Attendees:

Bob Raisch, Department of Environmental
Quality (DEQ)
Tom Reid, DEQ
Abe Horpestad, DEQ
Bonnie Lovelace, DEQ
George Algard, Department of Agriculture
Don Allen, WETA
Gail Abercrombie, MT. Petroleum
Association

Approval of Minutes

The WPCAC meeting was called to order by Chairman Richard Parks at 1:30 p.m. The Council approved the minutes from the June 21, 2001 meeting

Water Quality Permit Fee Rules

Bonnie Lovelace said these fee rules go toward the operation of the permitting program in the Water Protection Bureau with a percentage going toward the Planning, Prevention, and Assistance Division for standards and the Enforcement Division for Water Quality Act (WQA) permitting action enforcement. The current surplus of money in the account will be used up this fall putting the account at a negative balance at the end of this year. During this year's legislative session, the permit program received four new positions; three permit writers and one administrative person, which will need to be funded by these fees as well. There is a large backlog in permitting and the amount of work to do a permit is increasing. Additional programs are being taken on that are covered by these FTE and include the Phase II Stormwater

The numbers in the proposed fee rule include a five-percent increase each year into the future. The years 2002 and 2003 used legislative appropriations to create real numbers. The numbers described in your information packets may be overestimated by as much as two hundred thousand dollars for each year and may be lowered. The proposal includes enough money to keep the program running in the event of unexpected incidents and expenses without creating an abundant surplus in the account. The fees rule changes include the application fees and annual fees based on flow.

Doug Parker asked what was the status on hiring the four positions that have been approved by the legislative?

Bonnie Lovelace answered that the positions have not been hired yet, we want to be sure the funds are available to take these positions on.

Doug Parker asked what the justification was on putting some of the fee money toward standards and enforcement?

Bonnie Lovelace answered that the statute indicates how the fees shall be collected and lists items such as monitoring, standards, enforcement, and permitting as areas in which the fees will be used.

Mike Cobb asked if the other entities that these permit fees are going toward provide services to the permit holders or non-permit holders?

Bob Raisch said that standards and stream classification help determine what the effluent limits in the permit will be. There are also questions on interpretation of standards, which require standards section to work with the permit writers to ensure there is a consistent, logical approach to those situations.

Bonnie Lovelace said that enforcement division bills all WQA enforcement actions to the water quality fee account. All enforcement actions are categorized and charged accordingly by statute.

Barb Butler asked if the degradation authorization fee for subdivision approvals only applies to subdivisions on private community septic systems?

Tom Reid said that the fees for non-degradation in this rule package are for authorization to degrade by any subdivision, municipal, or industrial facility. All other non-degradation fees are unchanged. For example: this fee rule change would apply if a small community was hooking up a major subdivision and will double the allocated load under non-degradation. This would be an increased source and reviewed under non-degradation rules. If determined to be significant and the community wanted to pursue the option to get an authorization to degrade then these new fees would apply.

Doug Parker asked out of public, private and state categories mentioned in the fee rule changes, why are there no fees proposed for the state?

Tom Reid said that those state facilities are hard rock mines that have forfeited their bonds and are now under state control. The department has been instructed by the director to cease collection of fees on these facilities.

Bonnie Lovelace said that the only place such fees would come from now are the forfeited bonds. The bonds are intended to be used to clean up on site and get as much reclamation done rather than paying fees to write permits.

Tom Reid said that a combination of money from the 106 and Environmental Management Bureau would be funding half the FTE while the department works on those specific permits. It is intended to keep them out of this fee structure to prevent from taking fees away from other permittees.

John Wilson asked if it was correct to say that the state is going to run a deficit either way and this is just a question on where that deficit appears? The real problem here is the bond forfeiture.

Tom Reid said that yes that is true. The priorities have been given to the on-the-ground work of operation of wastewater treatment system and reclamation work. The term “state” in this fee rule change was only used as an accounting tool to show revenue and only applied to abandoned or forfeited facilities. All other state activities do pay the appropriate fees.

Under the current permit fee structure there are individual permits, general permits, and other activities including 308, 318, and 401 certifications which are all referring to sections of the act that require the department to take action to issue an authorization or permit for a particular type of activity. The individual permit category is divided into private and public permits as defined in the rules and is a fundamental aspect of the Montana Pollutant Discharge Elimination System (MPDES) and National Pollutant Discharge Elimination System (NPDES) programs. Under the current fee structure there are two components to each permit: the application fee and the annual fee. There are currently twenty-eight different fee categories. There are also fees based on the number of out-falls a permit holder has. The only fee stipulation in the actual law is a twenty-five percent non-accumulative fee reduction that the department is required to give annually to the discharger if there has been no violation to their permit condition in the previous calendar year. This fee rule change will now actively collect permit fees for the 308, 318 and 401 certifications. This fee rule change will attempt to simplify the fee permit structure to be consistent throughout and easier to maintain. The number of permit categories has been reduced and simplified into a table format. This fee rule change maintains the public and private categories because there are differences in the wastewater characteristics between the two. Private dischargers generally are industrial facilities. During inspection they require a number of site-specific parameters to be checked that are not required in domestic wastewater systems. Within the private category there will be a distinction between process water and cooling water. There will also be a distinction between major and minor permits. Major permit holders require more work and must be inspected once a year. The twenty-five percent fee reduction is in the statute and will remain in place. In any given year, approximately half of all individual permits will have some kind of violation. General permits are difficult to track and determine the compliance status so nearly all get the fee reduction.

John Wilson asked if the fee rule changes are cost based so the program and all components of the program will pay for themselves?

Tom Reid said that it was the intention of this fee change rule to get back the cost for issuing permits. The categories that are going to change most significantly are ones in which the department is not getting back the cost for issuing the permit, most notably the application component because of the increased amount of work to complete a permit. The department will now do the public notice process for the major permits to have an accurate account of them for the administrative records. The application of groundwater permits is more complex and requires more monitoring. The numbers on the tables that were mailed to the council are a high estimate and will go down in some categories for the final version. Phase II Stormwater rules are currently being developed. This fee rule change will include a fee schedule for the Phase II Stormwater permits that will be issued as soon as the rules are adopted.

Mike Cobb asked if the smaller facilities were helping pay for the department’s time in monitoring the large facilities, or are the fee increases enough that the large facilities are taking care of themselves?

Tom Reid answered that in the past the larger facilities were covering all of the program costs. Each category was looked at separately and an estimate on how much it would cost to run each permit for a year was made to help balance the cost between large and small facilities.

Mike Cobb asked if extra time spent on certain categories and new staffing was reflected in the fee increases?

Tom Reid said yes and the area most underfunded was the actual processing of the applications. The department is two to three years behind on processing applications. Environmental Protection Agency (EPA) has issued a mandate to reduce the major permit backlog by ten percent by December 31, 2001, which will not be met and reduce all permit backlog by ten percent by the year 2004. Permits are only good for up to five years by law and must be renewed to meet current standards when they expired.

Mike Cobb asked if there would be an increase in the percentage of permit fees going toward enforcement and standards with this fee rule change?

Bonnie Lovelace answered that the rough percentage would not increase. The enforcement and standards programs will define their needs every two years and go before the legislature for authorization. The mandate regarding the fees is to write it for the legislative approved budget and this would include the other programs portion. In general, every department will have personnel raises and inflation costs that will increase the budget.

John Wilson asked if the annual fee for general permits involving portable suction dredges has gone down?

Tom Reid said that the application fee for suction dredges has increased from two hundred dollars to two hundred and fifty dollars but the annual fee remains the same at two hundred dollars. The rationale for low fees is that people tend not to pay and go out to dredge a section without a permit. The dredge one day and are gone the next day. On new permits it is the application fee plus the first year annual fee combined. There is an enforcement problem regarding these permits.

John Wilson asked if the annual fee for general stormwater permits relating to oil and gas set at six hundred dollars is realistic in terms of cost recovery?

Tom Reid answered that the department estimates it to be enough to cover the FTE's and the amount of time that is spent on the permit.

Doug Parker asked if there were cases, other than the mining permits, in which the permit holder would have to pay MPDES fees and Montana Environmental Policy Act (MEPA) fees?

Tom Reid answered that it would happen anytime there was a large enough facility or proposed action that would trigger significance under MEPA. The department is not allowed to charge time toward the MEPA fees.

Mike Cobb asked if there is a back up plan in the event these fee rule change were not approved?

Bonnie Lovelace said no, there were no other designated funding source for this program in the event the fee rule change is not approved. Statute mandates that fees must run this program and it is the only option the department has at this time.

John Wilson said that the two hundred dollars on the suction dredge annual fee is too low and should be raised.

Don Allen said that the information should have gone out with Tom Reid's explanation sooner to allow more time to look over the numbers. There are still many questions that need to be answered. More time is needed to allow the public and permittees to review and examine this information and fully understand it so they will support these changes. It would be preferable if the department went forward with this at the November Board of Environmental Review (BER) meeting rather than the September meeting to give more time to review the fee rule change.

Gail Abercrombie said they wanted to know why Great Falls was higher than Billings. It would be useful to help understand the fee changes if the multipliers, bases, budgets and any other factors were supplied and explained.

Bob Raisch said that if the department did not go before the BER for initiation rulemaking until November, and normal procedures of skipping a meeting were followed, the fee rule change would not be approved until March. This would be one month after billing, would this be a problem?

Bonnie Lovelace answered that it is something of a problem that they would have to take a look at to see if it would be possible to do.

John Wilson asked Don Allen if he was concerned about how the appropriation of money is divided between the permit holders? If they could go forward and discuss the allocation of fees as we proceed to the BER?

Don Allen said that the concern was about what went to various programs and what work was being done in certain areas. Permit holders need to know why the fees are changing as they are. If they decided not to agree with the numbers it would be easier to make adjustment with the department than having to go before the BER and make changes there.

Doug Parker said the council would like an updated version of the fee rule changes with the latest changes to be able to make any kind of decision.

Mike Cobb asked if there was going to be a two hundred thousand dollar surplus in the account with these fee rules?

Bonnie Lovelace answered that the account will have a little over a hundred thousand dollars in the account at the end of this year. The department requires eighty thousand dollars in the account to run for a month in the event that something goes wrong. By the year 2005 the account will go negative if the department collects and spends exactly as estimated.

John Wilson said that council should get a packet containing the final numbers and a written slip to vote with and give written recommendations on the fee change rules to be returned to someone in the department.

Other Business

Mike Cobb asked if the WQA defines pollution as any foreign body, and if noxious weed seeds are considered a pollutant? The department should be the head entity in controlling noxious weeds. This may be an agenda item for a future meeting.

Abe Horpestad answered that under the current WQA a pollutant is industrial waste, other waste, or sewage or something that violates water quality standards. Weed seeds could possibly be classified as industrial waste in terms of farming but it is a stretch that would be hard to reach under the WQA. This should be dealt with under the weed control districts and their authority rather than water.

George Algard said that technically the control of noxious weeds is a county responsibility. If the county follows through and gets the cooperation of everyone then there should be some signs of improvements in future years.

Doug Parker asked if there was some kind of permit issued for the application of pesticides and herbicides.

Bonnie Lovelace said that there was a circuit court ruling on an Oregon case that essentially said for the use of pesticides and herbicides in and around water a NPDES permit was needed. The department can not write a permit that has toxic material in it. The 308 is an authorization under the WQA the department can issue for this.

George Algard asked what is the 308 authorization and who is it issued to and for how many applications?

Tom Reid said that the 308 is not an assurance against users getting sued under the Federal Clean Water Act, which is a big concern among applicators. The Environmental Protection Agency is coming up with a guidance this winter and the department will wait to see what direction they are taking to decide how to resolve these issues. The applicator of the pesticide is the one who would be the permittee. In cases where there is more than one applicator working for one owner, the department issues a 308 to cover the activity as part of the district.

Bob Raisch said that the next meeting is scheduled for October 18, 2001. Agenda items will be solicited.

Doug Parker suggested keeping the topic of 308 permits open and if any new information is available to make a presentation on it at the next meeting.

Mike Cobb said that if the 308 fee affects every applicator, it might be too high.

Richard Parks adjourned answered the meeting at 3:30 p.m.